

THE UNITED STATES DISTRICT COURT
THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

HEATHYR J. ELLINGTON, Individually, and §
As Representative of the Estate of MICHAEL §
EARL ELLINGTON, Deceased, and §
JOHN-MICHAEL ELLINGTON, §

Plaintiffs, §

VS. §

THE UNITED STATES OF AMERICA, §
METRO AMBULANCE SERVICE, and §
GLOBALREHAB MANAGEMENT, L.L.C. §

Defendants. §

CIVIL NO. SA-15-CA-426

PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

1. Now comes, HEATHYR J. ELLINGTON, Individually and As Representative of the Estate of MICHAEL EARL ELLINGTON, Deceased, and JOHN-MICHAEL ELLINGTON, hereinafter referred to as Plaintiffs' in the above styled and numbered cause, complaining of the UNITED STATES OF AMERICA, METRO AMBULANCE SERVICE, and GLOBALREHAB MANAGEMENT, L.L.C., hereinafter referred to as Defendants, and for cause of action would respectfully show unto the Court as follows:

JURISDICTION

2. Jurisdiction in this case is founded on the Federal Tort Claims Act, Title 28 U.S.C. §1346(b), and 28 U.S.C. §1367. The amount in controversy exceeds the sum of \$100,000.00, exclusive of interest, costs, and attorney's fees.

VENUE

3. Plaintiff, HEATHYR J. ELLINGTON, is a resident/citizen of Austin, Travis County, Texas. Plaintiff, JOHN-MICHAEL ELLINGTON, is a resident/citizen of San Antonio, Bexar County, Texas.

4. Each of the relevant acts complained of occurred in San Antonio, Bexar County, Texas, within the San Antonio Division of the United States District Court for the Western District of Texas.

ADMINISTRATIVE CLAIMS

5. Plaintiffs, HEATHYR J. ELLINGTON, Individually and As Representative of the Estate of MICHAEL EARL ELLINGTON, Deceased, and JOHN-MICHAEL ELLINGTON, have filed their original Claims for Damages with the Department of the Army, Brooke Army Medical Center, Fort Sam Houston, Texas, which was received by the Department of the Army on May 2, 2014, more than six (6) months prior to the filing of this Original Complaint. The Department of the Army has not denied the Plaintiffs claims; however, the investigative six (6) month period has expired as of November 2, 2014.

NOTICE OF HEALTHCARE CLAIM

6. A written notice of a Healthcare Claim in accordance with Section 74.052 of the Texas Civil Practice and Remedies Code was received by the Defendant, METRO AMBULANCE SERVICE, and GLOBALREHAB MANAGEMENT, L.L.C. on September 24, 2014. Copies of those written healthcare claims are attached to the Plaintiffs' Original Complaint and labeled as Exhibit "A" and Exhibit "B".

SERVICE

7. Service of citation may be had upon the Defendant, UNITED STATES OF AMERICA, by serving its agent, Richard L. Durbin, Acting United States Attorney for the Western District of Texas, at his office located at 601 NW Loop 410, San Antonio, Bexar County, Texas 78216, and by sending a true and correct copy of this Complaint by Certified Mail, Return Receipt Requested, to The Honorable Loretta Lynch, Attorney General of the United States of America, The Department of Justice, 10th and Constitution N.W., Room B-112, Washington, D.C. 20530.

8. Service of Citation may be had upon the Defendant, METRO AMBULANCE SERVICE, by serving its registered agent for service, Ms. Susan Baldwin-Beck, 129 Commercial Place, Schertz, Texas 78154.

9. Service of Citation may be had upon the Defendant, GLOBALREHAB MANAGEMENT, L.L.C., by serving its registered agent for service, Mr. Andrew N. Meyercord, 1601 Elm Street, Suite 4600, Dallas, Texas 75201.

AGENCY

10. The Defendant, UNITED STATES OF AMERICA, acting by and through its agents, servants and/or employees of the Department the Army, owns and operates the Brooke Army Medical Center located at Fort Sam Houston, Bexar County, Texas. Said facility provides healthcare services for persons such as Plaintiff, MICHAEL EARL ELLINGTON, Deceased.

11. The Defendant, METRO AMBULANCE SERVICE, is an emergency medical services provider located in Schertz, Texas. Said facility provides emergency healthcare services for persons such as MICHAEL EARL ELLINGTON.

12. The Defendant, GLOBALREHAB MANAGEMENT, L.L.C., a healthcare institution located in San Antonio, Bexar County, Texas. Said facility provides healthcare services for persons such as MICHAEL EARL ELLINGTON.

FACTUAL BACKGROUND

13. MICHAEL EARL ELLINGTON, was a 47-year-old man who was born on May 19, 1965, and who died on March 30, 2013. On March 10, 2013, MICHAEL EARL ELLINGTON sustained serious injuries in a motorcycle accident, and was transported to the Brooke Army Medical Center's Emergency Room. Upon arrival his injuries were determined to include left epidural and subdural hematomas, a right sided subarachnoid hemorrhage, a right temporal lobe cortical hemorrhagic contusion, multiple left rib fractures, a left hemopneumothorax, a left scapular fracture, a left pulmonary contusion, a fracture of the left calvarium, a left temporal bone fracture, and multiple nasal fractures. On March 10, 2013, an aorta CT was obtained and read as reflecting **"the spleen demonstrates no hematoma or laceration, but there is an area of blush enhancement that is somewhat diffused"**. No follow-up of this finding was ordered or obtained, and it was not reported to Defendant, GLOBALREHAB MANAGEMENT, L.L.C., at the time of MICHAEL EARL ELLINGTON's transfer to its San Antonio facility on March 21, 2013.

14. Upon MICHAEL EARL ELLINGTON's arrival at the GLOBALREHAB MANAGEMENT, L.L.C., its San Antonio facility, on March 21, 2013, his admitting diagnosis multiple traumatic injuries. During the early morning of March 30, 2013, MICHAEL EARL ELLINGTON experienced profound hypotension, progressing to a full cardiac arrest at or around 7:10 a.m.. Code Blue was initiated. Subsequently, the Defendant, METRO AMBULANCE SERVICE, was contacted at or around 7:32 a.m. and arrived at the facility at

around 7:55 a.m. MICHAEL EARL ELLINGTON, was then transported to the North Central Baptist Hospital. Upon his arrival to the North Central Baptist Hospital's Emergency Room at around 8:15 a.m., MICHAEL EARL ELLINGTON was in full arrest. CPR and ACLS protocols were initiated, but MICHAEL EARL ELLINGTON was pronounced dead at 8:36 a.m. on March 30, 2013. On March 31, 2013, an autopsy was performed by the Bexar County Medical Examiner's Office. The conclusion of the medical examiner was that MICHAEL EARL ELLINGTON died "as a result of a hemoperitoneum due to a ruptured contusion of the spleen due to multiple blunt forced injuries sustained in a motor vehicle crash".

NEGLIGENT ACTS AND/OR OMISSIONS

15. Plaintiffs, HEATHYR J. ELLINGTON, Individually and As Representative of the Estate of MICHAEL EARL ELLINGTON, Deceased, and JOHN-MICHAEL ELLINGTON, would show that the Defendant, UNITED STATES OF AMERICA, acting by and through its agents, servants and/or employees at Brooke Army Medical Center, was negligent in the healthcare and treatment provided to MICHAEL EARL ELLINGTON, and that such negligence was a direct and proximate cause of his death and the injuries and damages suffered by the Plaintiffs' herein. Such negligent acts and/or omissions include, but are not limited to the following:

- (A) Failure to timely diagnose and treat MICHAEL EARL ELLINGTON's, 1000-cc hemoperitoneum;
- (B) Failure to timely report the findings of the aorta CT obtained on March 10, 2013, to the GLOBALREHAB MANAGEMENT, L.L.C., San Antonio facility upon the transfer of MICHAEL EARL ELLINGTON to its San Antonio facility on March 21, 2013; and
- (C) Failing to act as physicians and healthcare providers of ordinary prudence would have acted under the same or similar circumstances.

16. Each and all of the above foregoing acts of the Defendant, both of omission and commission, were negligent and constituted negligence, and each and all were a proximate cause of the injuries and damages sustained by the Plaintiffs' herein.

17. Plaintiffs, HEATHYR J. ELLINGTON, Individually and As Representative of the Estate of MICHAEL EARL ELLINGTON, Deceased, and JOHN-MICHAEL ELLINGTON, would show that the Defendant, METRO AMBULANCE SERVICE, acting by and through its agents, servants and/or employees, was negligent in the emergency healthcare services owed to its patient, MICHAEL EARL ELLINGTON, and that such negligence was a direct and proximate cause of his death, and the injuries and damages suffered by the Plaintiffs' herein. Such negligent acts and/or omissions include, but are not limited to the following:

- (A) Failing to timely and properly transport MICHAEL EARL ELLINGTON to the North Central Baptist Hospital's Emergency Room, or the closest medical facility capable of providing emergency medical care to MICHAEL EARL ELLINGTON;
- (B) Failing to timely and properly perform CPR and ACLS on MICHAEL EARL ELLINGTON during the time he was being transported from the GLOBAL REHAB MANAGEMENT, L.L.C.'s, San Antonio facility to the North Central Baptist Hospital's Emergency Room on March 30, 2013; and
- (C) Failing to act as healthcare providers of ordinary prudence would have acted under the same or similar circumstances.

18. Each and all of the above foregoing acts of the Defendant, both of omission and commission, were negligent and constituted negligence, and each and all were a proximate cause of the injuries and damages sustained by the Plaintiffs' herein.

19. Plaintiffs, HEATHYR J. ELLINGTON, Individually and As Representative of the Estate of MICHAEL EARL ELLINGTON, Deceased, and JOHN-MICHAEL ELLINGTON, would show that the Defendant, GLOBALREHAB MANAGEMENT, L.L.C., acting by and through its agents, servants, and/or employees, was negligent in the healthcare and treatment provided to,

MICHAEL EARL ELLINGTON, and that such negligence was a direct and proximate cause of his death, and the injuries and damages suffered by the Plaintiffs' herein. Such negligent acts and/or omissions include, but are not limited to the following:

- (A) Failing to timely diagnose and treat MICHAEL EARL ELLINGTON's worsening hemoperitoneum;
- (B) Failing to timely diagnose and treat MICHAEL EARL ELLINGTON's worsening hypotension;
- (C) Failing to request and obtain complete medical records from the Brooke Army Medical Center on MICHAEL EARL ELLINGTON, including all laboratory tests and radiology studies obtained during his hospitalization at the Brooke Army Medical Center;
- (D) Failing to timely and properly perform CPR and ACLS protocols on MICHAEL EARL ELLINGTON following his cardiac arrest on or about 7:10 a.m. on March 30, 2013; and
- (E) Failing to act as physicians and healthcare providers of ordinary prudence would have acted under the same or similar circumstances.

20. Each and all of the forgoing acts of the Defendant, both of omission and commission, were negligent and constituted negligence, and each and all were a proximate cause of the injuries and damages sustained by the Plaintiffs' herein.

DAMAGES

21. Plaintiffs, HEATHYR J. ELLINGTON and JOHN-MICHAEL ELLINGTON, in their individual capacities, would show that the negligent acts and/or omissions of the Defendants, jointly and severally, were a direct and proximate cause of the injuries and damages resulting from the premature death of MICHAEL EARL ELLINGTON. Plaintiffs seek to recover their pecuniary loss in the past, and the pecuniary loss that, in reasonable probability, will be sustained in the future. Plaintiffs, in their individual capacity, also seek to recover their loss of companionship and society sustained in the past, and the loss of companionship and society that,

in a reasonable probability, will be sustained in the future. Plaintiffs, in their individual capacity, seek to recover their mental anguish sustained in the past, and the mental anguish that, in reasonable probability, will be sustain in the future. Plaintiffs, in their individual capacity, also seek to recover their loss of inheritance, together with all other damages allowable, pursuant to provisions of the Texas Wrongful Death Statute.

22. Plaintiff, HEATHYR J. ELLINGTON, as Representative of the Estate of MICHAEL EARL ELLINGTON, Deceased, seeks to recover for his physical pain and mental anguish he sustained between March 10, 2013 and his death on March 30, 2013. Plaintiff, HEATHYR J. ELLINGTON, as Representative of the Estate of MICHAEL EARL ELLINGTON, Deceased, also seeks to recover all medical and funeral expenses of Plaintiff, MICHAEL EARL ELLINGTON, Deceased, together with all other damages allowable, pursuant to provisions of the Texas Survival Statute.

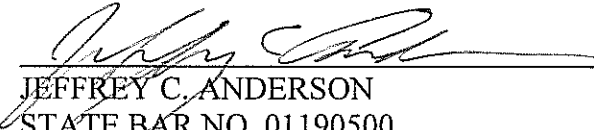
DAMAGE LIMITATIONS

23. Plaintiffs believe and allege that the damages caused by the negligent acts of omissions and/or commissions of the Defendants', acting jointly and severally, have injured the Plaintiffs in an amount within the jurisdictional limits of this Court.

24. WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the Defendants herein be duly cited to appear and answer herein, and that upon final hearing of this suit, Plaintiffs have and recover judgment from the Defendants, jointly and severally, in an amount within the jurisdictional limits of this Court, together with pre-judgment and post-judgment interest as allowed by law, exemplary or punitive damages as allowed by law, plus reasonable costs of Court, and for such other and further relief, both general and special, in law and equity, to which the Plaintiffs' may show themselves to be justly entitled.

Respectfully submitted,

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